



Loan Guaranty: Maximum Allowable Fees for Legal Services

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice provides updated information to participants in the Department of Veterans Affairs (VA) Home Loan Guaranty program concerning the maximum allowable fees for legal services performed in connection with the foreclosure of single-family housing loans. This notice also provides updated information concerning the legal fees for bankruptcy-related services. The table in this notice contains the amounts the Secretary has determined to be reasonable and customary in all states, following an annual review of the amounts allowed by other Government-related home loan programs.

DATES: The new maximum allowable fees for legal services will be allowed for all guaranty claims submitted to VA on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Trevayne, Assistant Director for Loan and Property Management, Loan Guaranty Service (261), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 632-8795. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The VA Home Loan Guaranty program authorized by title 38, United States Code, chapter 37, offers a partial guaranty against loss to lenders who make home loans to Veterans. VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, *et seq.* Computation of guaranty claims is addressed in 38 CFR 36.4324, which states that one part of the indebtedness upon which the guaranty percentage is applied is the “[a]llowable expenses/advances as described in [38 CFR 36.4314].” 38 CFR 36.4324(a)(2). Section

36.4314(b)(5)(ii) describes the procedures to be followed in determining what constitutes the reasonable and customary fees for legal services performed in connection with the foreclosure of single-family housing loans.

Pursuant to § 36.4314(b)(5)(ii), the Secretary is required to annually review allowances for legal fees in connection with the foreclosure of single-family housing loans, including bankruptcy-related services, issued by the Department of Housing and Urban Development (HUD), the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). In March 2021, Fannie Mae issued revisions to their allowances for legal fees. Fannie Mae, *Allowable Foreclosure Attorney Fees Exhibit*, Servicing Guide (March 10, 2021), <https://servicing-guide.fanniemae.com>. The following month, HUD announced its plans to adopt Fannie Mae's fee structure by August. HUD, *National Servicing Center Single Family Housing Policy Handbook 4000.1 Section III: Servicing and Loss Mitigation Key Changes* (April 22, 2021), https://www.hud.gov/sites/dfiles/SFH/documents/sfh_hb_4000_1_sect_3_serv_loss_mit_04_22_21.pdf. Freddie Mac has also announced new allowances for legal fees, effective September 27, 2021. Freddie Mac, *Approved Attorney Fees and Title Expenses*, Seller/Servicer Guide Exhibit 57A (September 27, 2021), <https://guide.freddiemac.com/app/guide/exhibitRev/57A,09-27-2021>.

VA has reviewed and considered the legal fees allowed by each entity. Based on increases in fees for legal services announced by these Government-related home loan programs, the Secretary is publishing in the Federal Register a table setting forth the revised amounts the Secretary has determined to be reasonable and customary. The table reflects the primary method for foreclosing in each state, either judicial or non-judicial, with the exception of those states where either judicial or non-judicial is acceptable. The use of a method not authorized in the table will require prior approval

from VA. This table will be available throughout the year at:

https://www.benefits.va.gov/HOMELOANS/servicers_valeri_rules.asp.

There has been no change to the amounts VA will allow for bankruptcy filing fees. However, VA is clarifying that VA allows for a bankruptcy filing fee regardless of whether a bankruptcy release is obtained. VA notes that its current regulation at 38 CFR 36.4314(b)(5)(i) authorizes “[f]ees for legal services actually performed.” Regardless of whether a bankruptcy filing results in a release, legal services may have been performed in addressing the filing. Allowing fees for a bankruptcy filing is also consistent with the other Government-related home loan programs. See HUD, *National Servicing Center Single Family Housing Policy Handbook 4000.1 Section III: Servicing and Loss Mitigation Key Changes* (April 22, 2021), https://www.hud.gov/sites/dfiles/SFH/documents/sfh_hb_4000_1_sect_3_serv_loss_mit_04_22_21.pdf; Fannie Mae, *Allowable Bankruptcy Attorney Fees Exhibit*, Servicing Guide (September 11, 2019), <https://servicing-guide.fanniemae.com>; Freddie Mac, *Approved Attorney Fees and Title Expenses*, Seller/Servicer Guide Exhibit 57A (September 27, 2021), <https://guide.freddiemac.com/app/guide/exhibitRev/57A,09-27-2021>. VA will continue to monitor fees for legal services on an annual basis and publish updates in the Federal Register as VA deems necessary.

The following table reflects the Secretary’s determination of the reasonable and customary fees for legal services for the primary method for foreclosing in each state.

Jurisdiction	VA Non-Judicial Foreclosure ^{1,2}	VA Judicial Foreclosure ^{1,2}	Deed-in-Lieu of Foreclosure
Alabama	\$1,700	N/A	\$400
Alaska	\$2,000	N/A	\$400
American Samoa	\$1,600	N/A	\$400

Arizona	\$1,700	N/A	\$400
Arkansas	\$1,700	N/A	\$400
California	\$1,700	N/A	\$400
Colorado	\$2,100	N/A	\$400
Connecticut	N/A	\$3,100	\$400
Delaware	N/A	\$2,250	\$400
District of Columbia	\$1,500	\$2,875	\$400
Florida	N/A	\$4,100	\$400
Georgia	\$1,700	N/A	\$400
Guam	\$2,000	N/A	\$400
Hawaii	N/A	\$4,500	\$400
Idaho	\$1,450	N/A	\$400
Illinois	N/A	\$3,000	\$400
Indiana	N/A	\$3,000	\$400
Iowa	\$1,275	\$2,450	\$400
Kansas	N/A	\$2,400	\$400
Kentucky	N/A	\$3,000	\$400
Louisiana	N/A	\$2,500	\$400
Maine	N/A	\$3,250	\$400
Maryland	\$3,000	N/A	\$400
Massachusetts	N/A	\$3,400	\$400
Michigan	\$1,900	N/A	\$400
Minnesota	\$1,775	N/A	\$400
Mississippi	\$1,500	N/A	\$400
Missouri	\$1,700	N/A	\$400

Montana	\$1,700	N/A	\$400
Nebraska	\$1,400	N/A	\$400
Nevada	\$2,000	N/A	\$400
New Hampshire	\$1,700	N/A	\$400
New Jersey	N/A	\$4,350	\$400
New Mexico	N/A	\$4,000	\$400
New York—Western Counties ³	N/A	\$4,200	\$400
New York—Eastern Counties	N/A	\$5,225	\$400
North Carolina	\$2,175	N/A	\$400
North Dakota	N/A	\$2,200	\$400
Ohio	N/A	\$3,000	\$400
Oklahoma	N/A	\$2,700	\$400
Oregon	\$1,700	\$3,700	\$400
Pennsylvania	N/A	\$3,125	\$400
Puerto Rico	N/A	\$2,700	\$400
Rhode Island	\$2,250	N/A	\$400
South Carolina	N/A	\$2,850	\$400
South Dakota	N/A	\$2,250	\$400
Tennessee	\$1,500	N/A	\$400
Texas	\$1,700	N/A	\$400
Utah	\$1,700	N/A	\$400
Vermont	N/A	\$3,200	\$400
Virgin Islands	N/A	\$2,500	\$400
Virginia	\$1,700	N/A	\$400

Washington	\$1,700	N/A	\$400
West Virginia	\$1,450	N/A	\$400
Wisconsin	N/A	\$2,500	\$400
Wyoming	\$1,450	N/A	\$400

¹ When a foreclosure is stopped due to circumstances beyond the control of the holder or its attorney (including, but not limited to bankruptcy, VA-requested delay, property damage, hazardous conditions, condemnation, natural disaster, property seizure or relief under the Servicemembers Civil Relief Act) and then restarted, VA will allow a \$400 restart fee in addition to the base foreclosure attorney fee. This fee recognizes the additional work required to resume the foreclosure action, while also accounting for the expectation that some work from the previous action may be utilized in starting the new action.

² VA will allow attorney fees of \$1,050 (chapter 7) or \$1,500 (initial chapter 13) for an initial bankruptcy filing, regardless of whether a bankruptcy release is obtained. For multiple bankruptcy filings under either chapter, VA will allow an additional \$500.

³ Western Counties of New York for VA are: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wayne, Wyoming and Yates. The remaining counties are in Eastern New York.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 1, 2021 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

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